

Message Text

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PAGE 01 STATE 077133
ORIGIN L-03

INFO OCT-01 ARA-10 ISO-00 EB-08 SOE-02 AID-05 CEA-01
CIAE-00 COME-00 DODE-00 DOE-15 H-01 INR-10 INT-05
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DRAFTED BY L:SMSCHWEBEL:SIS
APPROVED BY ARA:RGARELLANO
EB/ORF:SWBOSWORTH
ARA/ECP/ITE:DTAHER
EB/IFD/OIA:MPBOERNER
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FM SECSTATE WASHDC
TO AMEMBASSY CARACAS PRIORITY

C O N F I D E N T I A L STATE 077133

E.O. 11652: GDS

TAGS: ENRG, EINV, VE

SUBJECT: TEXACO'S POSITION ON DEDUCTIONS FROM COMPENSATION

1. TEXACO VICE PRESIDENTS OLMSTEAD AND BISCHOFF AND TEXACO LATIN AMERICAN COUNSEL WATKINS CALLED ON DEPUTY ASSISTANT SECRETARY BOSWORTH AND DEPUTY LEGAL ADVISER SCHWEBEL ON MARCH 17. THEY EXHIBITED A COPY OF A LETTER SENT BY TEXACO TO DEPUTY ASSISTANT SECRETARY ARELLANO (ORIGINAL OF WHICH SUBSEQUENTLY HAS BEEN RECEIVED IN DEPARTMENT) WHICH RECITES TEXACO'S COMPLAINTS ABOUT THE DEDUCTIONS EXACTED BY G.O.V. FROM TEXACO'S HOLDINGS IN THE GUARANTY FUND FOR REPAIR AND REPLACEMENT OF ASSETS, AND WHICH FORMALLY REQUESTS U.S.G. TO ESPOUSE A CLAIM AGAINST G.O.V. ON TEXACO'S BEHALF IN
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 077133

AMOUNT OF \$13,741,953. (COPY OF LETTER AND SUPPORTING PROTEST TO G.O.V. BEING SENT SEPTTEL.)
2. AT MEETING, TEXACO FOUNDED THIS CLAIM (A) ON ALLEGATION THAT ANY SUCH DEDUCTIONS ARE UNJUSTIFIED BY TERMS OF NATIONALIZATION LAW, WHICH SPECIFIES PAYMENT OF NET BOOK VALUE AND THEREBY EXCLUDES DEDUCTIONS INCONSISTENT WITH CONCEPT OF NET BOOK VALUE; (B) ON FACT THAT PERCENTAGE OF DE-

DUCTIONS CHARGED TEXACO IS SOME TEN PERCENT HIGHER THAN AVERAGE OF DEDUCTIONS EXACTED FROM OTHER COMPANIES BY GOV; AND (C) ON ALLEGATION THAT NATIONALIZATION LAW PROVIDES FOR INADEQUATE COMPENSATION UNDER INTERNATIONAL LAW EVEN IF ALL PROVIDED FOR WERE TO BE PAID; GOV'S DEDUCTIONS FROM THAT INADEQUATE COMPENSATION WORSEN G.O.V.'S CASE. TEXACO'S REPRESENTATIVES EMPHASIZED POINT (B), MAINTAINING TEXACO IS VICTIM OF UNJUSTIFIED DISCRIMINATION.

3. IN PROBING THESE GROUNDS, WE NOTED THAT WE INITIALLY SAW NO GROUND IN INTERNATIONAL LAW FOR ESPOUSING A CLAIM BASED ON UNLAWFUL DISCRIMINATION, SINCE RULE AGAINST DISCRIMINATORY TAKINGS CONCERNS DISCRIMINATION AGAINST NATIONALS OF A GIVEN COUNTRY OR COUNTRIES BUT NOT DISCRIMINATION AMONG NATIONALS OF SAME COUNTRY. MOREOVER, IT WOULD BE HARD TO MAINTAIN THAT G.O.V. HAD TO APPLY SAME PERCENTAGE OF DEDUCTIONS TO EACH COMPANY SINCE IT WOULD ALLEGE THAT ITS DIFFERING PERCENTAGES RESPONDED TO THE DIFFERING CONDITIONS OF THE PROPERTIES APPRAISED. WHILE CONCEDED THESE POINTS, TEXACO'S REPRESENTATIVES CLAIMED THAT DEDUCTIONS WERE IN FACT ARBITRARY AND RESPONSIVE TO BIAS OF G.O.V. IN FAVOR OF LARGEST PRODUCERS. THEY REITERATED THE UNFAIR CHARACTER OF DEDUCTIONS AGAINST THEM, E.G., THAT MUCH WAS FOR REPAIR OR REPLACEMENT OF ASSETS ON WHICH G.O.V. HAD PAID TEXACO NO COMPENSATION WHATEVER. TEXACO STATED THAT A FAIR LEVEL OF DEDUCTIONS -- IF IT
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 077133

WERE ASSUMED, ARGUENDO, THAT ANY WERE ALLOWED -- WOULD HAVE BEEN EIGHT PERCENT, BUT THAT TEXACO WAS PREPARED TO SETTLE FOR THE AVERAGE OF SOME 27 PERCENT, BUT NOT SOME 37 PERCENT. THE THREE MILLION DOLLAR DIFFERENCE POSES IMPORTANT QUESTIONS OF PRINCIPLE, THEY MAINTAINED (ASSIGNING ONLY THAT OF DISCRIMINATION).

4. WE DID NOT DISPUTE THE LEGAL MERITS OF POINTS (A) AND (C). BUT WE NOTED THAT ANY DECISION TO ESPOUSE TEXACO'S CLAIM WOULD HAVE TO BE CAREFULLY WEIGHED AND THAT DECISION TO DO SO WOULD HAVE TO PASS POLITICAL AS WELL AS LEGAL MUSTER. AT THIS JUNCTURE, WE WOULD NECESSARILY HAVE TO CONSIDER THAT, WHATEVER THE MERITS, THE U.S.G. HAD NOT ESPOUSED A CLAIM AGAINST THE TERMS OF THE NATIONALIZATION LAW AND THAT THE OTHER COMPANIES WHICH FORMERLY HAD CONCESSIONS IN VENEZUELA HAD ACCEPTED OR ACQUIESCED IN THE DEDUCTIONS.

5. TEXACO RESPONDED THAT IT WAS NOT PRESSING FOR AN IMMEDIATE DECISION TO ESPOUSE ITS CLAIM. WHILE MAINTAINING ITS REQUEST FOR ESPOUSAL, IT STATED THAT IT WOULD AT THIS POINT BE SATISFIED BY A REPRESENTATION TO G.O.V. BY

U.S.G. ON TEXACO'S BEHALF, OF FOLLOWING SUBSTANCE. TEXACO HAD REJECTED THE PROPOSED DEDUCTIONS. IT CHALLENGES THE LEGAL AND EQUITABLE BASIS OF ANY DEDUCTIONS SINCE NET BOOK VALUE IS BASED ON ACCEPTANCE OF ASSETS ON AN "AS IS" BASIS. NEVERTHELESS IT IS PREPARED TO REACH A SETTLEMENT IN THE INTERESTS OF ITS WIDER RELATIONS WITH G.O.V. BUT THAT

SETTLEMENT CANNOT BE SO FAR IN EXCESS OF WHAT IS JUSTIFIED AS G.O.V. PROPOSES. TO THE BEST OF TEXACO'S JUDGMENT, DEDUCTIONS OF 8 PERCENT WOULD BE MERITED BY APPLICATION OF THE CRITERIA G.O.V. HAD SPECIFIED BUT TEXACO WAS NEVERTHELESS WILLING TO SETTLE FOR SOME 27 PERCENT, THE AVERAGE OF DEDUCTIONS APPLIED TO OTHER COMPANIES. IT WAS NOT WILLING TO ACCEPT THE 37 PERCENT LEVEL OF DEDUCTIONS, AND

CONFIDENTIAL

PAGE 04 STATE 077133

IS THE MORE UNWILLING IN CIRCUMSTANCES IN WHICH THE G.O.V. HAS DECLINED TO AFFORD TEXACO ACCESS TO THE DETAILS ON WHICH THE G.O.V. HAD ARRIVED AT ITS DEDUCTIONS. IN VIEW OF THESE CONSIDERATIONS, U.S.G. URGES G.O.V. TO ATTEMPT ANEW TO REACH AN AGREED SETTLEMENT WITH TEXACO.

6. WE REPLIED THAT WE WOULD BE PREPARED TO CONSIDER WHAT IN OUR JUDGMENT WOULD BE AN APPROPRIATE AND HELPFUL REPRESENTATION. WE SUGGESTED THAT ITS SUBSTANCE MIGHT BE CAST IN TERMS OF DUE PROCESS, I.E., THAT TEXACO IS OF VIEW THAT IT HAS NOT BEEN GIVEN THE FACTS ON WHAT IT SEES AS AN UNJUSTIFIABLY HIGH LEVEL OF DEDUCTIONS; THAT IT MIGHT CONDUCE TO AN AGREED SETTLEMENT BETWEEN THE G.O.V. AND TEXACO ON DEDUCTIONS IF THE G.O.V. WERE TO SHARE WITH TEXACO THE FACTS WHICH IN THE G.O.V.'S VIEW SUPPORT THE DEDUCTIONS ANNOUNCED; AND THAT, FOR OUR PART, WE HOPE THAT THERE WILL BE AGREEMENT ON DEDUCTIONS.

7. TEXACO REPRESENTATIVES INDICATED THAT THEY SAW THIS LINE OF APPROACH AS PROMISING.

8. EMBASSY'S PROMPT VIEWS ON MERITS AND UTILITY OF A REPRESENTATION ON LINES OF PARAGRAPH 6 OF THIS MESSAGE ARE INVITED. VANCE

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